

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5907

PETITION OF LAMONT AND TRACI HOFFMAN
(Hearing held July 23, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, October 3, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326. The petitioners propose to construct an accessory structure (swimming pool) in the side yard. Section 59-C-1.326 requires accessory structures to be located in the rear yard only.

The petitioners were represented at the public hearing by Susan W. Carter, Esquire, and Christopher Stewart Morrison, AIA, an architect.

The subject property Parcel 606, located at 11001 Glen Road, Potomac, Maryland, 20854, in the RE-2 Zone (Tax Account No. 00865304).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a swimming pool in the northeast section of the property.
2. Ms. Carter stated that the property is a large, irregularly shaped parcel that is 10.2 acres in size with frontage along Glen Road. Ms. Carter stated that the Piney Branch stream valley runs along the eastern side and through most of the property. Ms. Carter stated that new construction can not be built in the stream valley areas and that the property is steeply sloped.
3. Ms. Carter stated that the petitioners are rebuilding the existing residence and swimming pool and that the Department of Permitting Services (DPS) has designated the proposed location for the pool as a side yard. Ms. Carter stated that the existing pool would be relocated east of its current location. See, Exhibit 12 (colored site plan).
4. Ms. Carter stated that the property is screened from the neighboring properties by dense trees and vegetation and that the proposed construction meets the required setbacks.

5. Mr. Morrison testified that the new construction was designed to stay out of the stream valley buffer and to keep to a minimum any disturbance of the existing vegetation on the property. Mr. Morrison testified that the placement of the pool, as proposed, would not disturb an existing stand of specimen trees.
6. Mr. Hoffman testified that he consulted the Maryland-National Capital Park and Planning Commission (M-NCPPC) before starting construction on the property to determine if reforestation would be required and that reforestation would not be required for the new construction at the locations proposed.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional topographical or other conditions peculiar to the property that are not shared with the adjoining and neighboring properties. The Board finds that the petitioners' property significantly exceeds the minimum lot size for the zone and that new construction could be located on the property without the necessity of a variance. See, Exhibit No. 7 (zoning vicinity map).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure/swimming pool in the side yard is denied.

The Board adopted the following Resolution:

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Vice Chairman, in agreement, and Angelo M. Caputo, in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Donna L. Barron
Vice Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing

Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 3rd day of October, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.